

Appeal from a decision by the New Mexico State Office, Bureau of Land Management, rejecting a high bid for competitive oil and gas lease NM 55126.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

APPEARANCES: Norman L. Stevens, Jr., Vice President, Read & Stevens, Inc., Roswell, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Read & Stevens, Inc. (Read & Stevens), appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 9, 1985, rejecting appellant's high bid of \$4,972.80 (\$ 17.76 per acre) for parcel 14, offered at a competitive oil and gas lease sale held on December 14, 1982. BLM based its rejection of the bid on a memorandum prepared by BLM's Southwest Region Evaluation Team. A copy of the economic evaluation memorandum was attached to the BLM decision submitted to appellant.

The BLM decision of January 9, 1985, represents the second rejection of appellant's high bid. By decision dated January 31, 1983, BLM rejected appellant's bid for parcel 14, because the bid had been found to be insufficient, based on BLM's presale evaluation. Read & Stevens appealed the first rejection decision to the Board and in Read & Stevens, 75 IBLA 349 (1983), the Board found the case record inadequate because BLM's justification memorandum did not reveal the estimated minimum valuation of the parcel or the method of calculation of the estimated minimum value for the parcel used to support rejection of appellant's high bid.

In support of its 1983 rejection of Read & Stevens' bid for parcel 14 BLM stated in an April 20, 1983, memorandum:

The economic analyses for this parcel are based on comparative sales and an engineering estimate of the potential for recoverable hydrocarbons. A parcel adjacent to parcel 14, just to the northeast in section 3, received a high bid of \$1,139.89/acre in the April 27, 1982 lease sale. A parcel in the adjoining section to the north received a high bid of \$47.56/acre in the August 25, 1982 sale (parcel 45) from Read and Stevens; which was rejected. A high bid of \$57.00/acre was received for a parcel (parcel 47 of that sale) located in the same section as parcel 14; which was accepted. A parcel in the adjoining section to the south, section 16, received a high bid of \$1,335.98/acre in a state lease sale held on February 17, 1981.

After the Board's remand, BLM reconsidered its prior decision and provided further documentation of its reasons for rejecting the bid. A copy of the memorandum dated November 14, 1984, was sent to appellant with the second rejection decision.

The BLM Southwest Region Evaluation Team recommended that appellant's high bid for parcel 14 be rejected stating in part:

The standard used in determining whether the bonus (cash bid) on a given tract is acceptable involves a comparison of the high bid to the government's estimate of the dollar value of the tract. If the high bid is substantially beneath the government's estimate of the dollar value of the tract then said bid is deemed to be unacceptable within the meaning of Section 17 of the Mineral Leasing Act. The government's estimated dollar value for tract 14 is \$16,800.00 (\$60.00 per acre). The high bid, at \$4,972.80 (\$17.76 per acre), is substantially beneath the government's estimate. The government's estimate of dollar value for tract 14 was derived through a comparable sales analysis. The comparable sales approach has been recently described as:

(In) mineral appraisals, the comparable sales approach applies market data or prices obtained from actual transactions to the appraised property. Most credible are those recent sales which are of (geologically) similar properties in the vicinity of the appraised property.

Tract 14 is located in Section 9 of Township 24 South, Range 29 East, Eddy County, New Mexico. The most credible prior sale of a property on a geologically similar setting involved a parcel in Section 9 of the same township (sold for \$57.00 per acre in August 25, 1982).

The record contains a memorandum from the Minerals Management Service (MMS) which details the comparable sales used to obtain the presale estimate for this parcel. The tract evaluation states:

Tract Evaluation: Parcel No. 14; 12/14/82, KGS Sale
Date of Evaluation: 12/13/82

This parcel is a 280.00 acre tract located in Eddy County, New Mexico; being the NE/4, E/2NW/4, and NW/4NW/4 of Section 9; T24S, R29E, NMPM. The known geological structure is unnamed, but the area is locally known as the "Malaga Field" which is just one of the many producing areas in the "Tatum" part of the "Permian Basin." There are several geological horizons in the area which have production potential; however, at this time the primary "target" is the "Morrow" formation. "Morrow" production is found in ancient reef structures, beach sand stratigraphic pinch-outs, and fault structure traps, to name a few. Proven "Morrow," together with "Delaware," production is present in the southeast quarter of the northwest quarter of Section 10 (see map).

Within the last calendar year there have been several comparable leases within 2 miles of subject that have received bonus bids over \$1,000.00 per acre. However, because of the uncertainty created by local structural and stratigraphic anomalies, the best comparable lease for bonus value is as follows:

KGS oil and gas lease sale; August 25, 1982; being 40.00 acre in the NW/4 of the SW/4 of Section 9 (subject section); T24S; R29E; NMPM. Sold to Jack Bolls for \$ 2,280.00 total (or \$57.00 per acre) bonus. Adjoins subject tract on the south (see map).

Therefore, because the above comparable is considered to be the best indication of the current fair market value for bonus for the subject due to time, location, and geology parameters being equivalent to subject, the minimum acceptable bid for this tract is \$60.00 per acre or \$16,800.00 total.

In its statement of reasons on appeal, appellant characterizes parcel 14 as "wildcat acreage," in emphasizing the speculative nature of the lease. Appellant contends that it could not justify a higher lease cost because of the "poor quality of Morrow production in the area" (Statement of Reasons at 1). Appellant asserts that MMS' reliance upon a bid of \$57 for a 40-acre parcel in the NW 1/4 of the SW 1/4 of sec. 9, T. 24 S., R. 29 E., New Mexico Principal Meridian, was in error because it did not take into account the prevailing market conditions and did not consider that it was "offset" acreage (Statement of Reasons at 2).

In Read & Stevens, 70 IBLA 377, 381 (1983), this Board stated the standard against which appeals of rejections of high bid offers are to be considered:

The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

The Board has consistently held that while BLM is entitled to place great reliance on MMS's technical expertise, the decision rejecting a high bid is that of BLM and, thus, BLM must analyze independently the question of sufficiency. William C. Welch, 60 IBLA 248 (1981); see also Southern Union Production, 51 IBLA 89 (1980); Steven Lutz, 39 IBLA 386 (1979).

The Department is entitled to rely on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Dan Nelson, 85 IBLA 156 (1985); L. B. Blake, 67 IBLA 103 (1982). If the record indicates a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

The Board has repeatedly stressed the need for BLM to document the reasons for its determination in the record. Such was initially the case here. In Read & Stevens, 72 IBLA 390 (1983), the records were initially found to be insufficient for the Board to determine the correctness of the BLM decisions or the merits of appellant's arguments. The Board there, as here, stated that the records did not then reveal estimated minimum values for the parcels or sufficient factual data to support rejection of appellant's bids, and, therefore, set aside BLM's initial rejection, and remanded the cases to BLM for further consideration. Read & Stevens, *supra*.

In this case BLM supplemented the record and affirmed its initial decision, providing presale evaluation information for both parcels. After considering the entire record now before us, we find that BLM established a rational basis for its presale estimates. The BLM decision was based on the proximity of producing wells, comparable lease data, and its presale evaluation of the value of the parcel. Therefore, appellant has an affirmative obligation to demonstrate its bid represents the fair market value and that the Government estimate was inaccurate. The Westlands Co., 83 IBLA 43 (1984). The Secretary or his delegate need not prove the bid inadequate in order to support a rejection decision. A rejection is an exercise of the Secretary's discretion, and deference is given to such action if, in the public interest, the Secretary determines a bid to be for less than the

Department's estimate of fair market value. The record need only be sufficient to establish that the decision was neither arbitrary nor capricious. Harvey E. Yates Co., 71 IBLA 134 (1983); Kerr McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975). Appellant has responded with general statements regarding the speculative nature of drilling prospects and the reduction of fair market value amounts as a result of depressed gas prices.

Accordingly, we find the record supports the rejection of appellant's bid. Appellant has made no showing that the decision was arbitrary, capricious or based upon inaccurate data. The arguments presented by appellant on appeal are insufficient to overcome the weight which we properly accord to the BLM findings. Appellant's arguments merely represent one evaluation of the fair market value of the parcel. Appellant has failed to establish that the Government's evaluation was erroneous.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge.